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10

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 DIANE BLACKMAN, an individual;
14 DOUG CAVANAUGH, an individual;
15 OLIVIER DELMAS, an individual; ERIC
16 FAN, an individual; JAY FLECK, an
17 individual; BENJAMIN GEIGER, an
18 individual; NINA GRONLUND, an
19 individual; NEIL HAMPTON, an
20 individual; STEPHEN HARRIS, an
21 individual; AGATA KAMIENSKA, an
22 individual; WILLIAM CHUA TIONG
23 KENG, an individual; CHOW HON
24 LAM, an individual; JENNIFER LE
25 FEUVRE, an individual; JAMIE
26 MARSHALL, an individual; DAMIEN
27 MASON, an individual; MARIO
28 SANCHEZ NEVADO, an individual;
NICKERSTICKERS, INC., a Washington
corporation; DAVID OLENICK, an
individual; LIZA PHOENIX, an
individual; ALAN PIRIE, an individual;
NATHAN RYDER, an individual;
JENNIFER SMITH, an individual;

Case No.:

PLAINTIFFS' COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT;
2. VICARIOUS AND/OR CONTRIBUTORY COPYRIGHT INFRINGEMENT; AND
3. VIOLATION OF 17 U.S.C. § 1202

Jury Trial Demanded

1 BALAZS SOLTI, an individual; JYNELL
2 ST. JAMES, an individual; KARIN
3 TAYLOR, an individual; ZACH
4 TERRELL, an individual; SIERRA
TIEGS, an individual; and MAIKE
VIERKANT, an individual;

5 Plaintiffs,

6
7 v.

8 TEESPRING, INC., a Delaware
9 Corporation; and DOES 1-3;

10 Defendants.
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13 Plaintiffs DIANE BLACKMAN, DOUG CAVANAUGH, OLIVIER DELMAS,
14 ERIC FAN, JAY FLECK, BENJAMIN GEIGER, NINA GRONLUND, NEIL
15 HAMPTON, STEPHEN HARRIS, AGATA KAMIENSKA, WILLIAM CHUA
16 TIONG KENG, CHOW HON LAM, JENNIFER LE FEUVRE, JAMIE MARSHALL,
17 DAMIEN MASON, MARIO SANCHEZ NEVADO, NICKERSTICKERS, INC.,
18 DAVID OLENICK, LIZA PHOENIX, ALAN PIRIE, NATHAN RYDER, JENNIFER
19 SMITH, BALAZS SOLTI, JYNELL ST. JAMES, KARIN TAYLOR, ZACH
20 TERRELL, SIERRA TIEGS, and MAIKE VIERKANT (“Plaintiffs” or “Artists”), by
21 and through their undersigned attorneys, hereby pray to this honorable Court for relief
22 based on the following:
23
24

25 **INTRODUCTION**

26 Plaintiffs are national and international artists and designers whose unique and
27 imaginative works have been misappropriated and incorporated into unauthorized
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1 apparel and consumer goods, which items are then marketed and sold to the public.
2 Despite Defendant's knowledge of the infringement, Plaintiffs' rights continue to be
3 violated. This action is brought to address the widespread and ongoing infringement
4 of Plaintiffs' rights in and to their artworks.

5 6 **JURISDICTION AND VENUE**

7 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., §§ 101
8 *et seq.*

9 2. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and
10 1338 (a) and (b).

11 3. This Court has personal jurisdiction over Defendant because Defendant has
12 a continuous, systemic and substantial presence in California, including within this
13 judicial district, and has its principal place of business located in California.

14 4. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(c) and
15 1400(a) in that this is the judicial district in which Defendant can be found and in
16 which a substantial part of the acts and omissions giving rise to the claims occurred.

17 **PARTIES**

18 5. Plaintiff DIANE BLACKMAN ("BLACKMAN") is an individual domiciled
19 and residing in Oakland, California;

20 6. Plaintiff DOUG CAVANAUGH ("CAVANAUGH") is an individual
21 domiciled and residing in Ferndale, Pennsylvania;

22 7. Plaintiff OLIVIER DELMAS ("DELMAS") is an individual domiciled and
23 residing in Poitiers, France;

24 8. Plaintiff ERIC FAN ("FAN") is an individual domiciled and residing in
25 Ontario, Canada;

26 9. Plaintiff JAY FLECK ("FLECK") is an individual domiciled and residing in
27 Shorewood, Illinois;

10. Plaintiff BENJAMIN GEIGER (“GEIGER”) is an individual domiciled and residing in Temple City, California;

11. Plaintiff NINA GRONLUND (“GRONLUND”) is an individual domiciled and residing in Utrecht, Netherlands;

12. Plaintiff NEIL HAMPTON (“HAMPTON”) is an individual domiciled and residing in Bristol, United Kingdom;

13. Plaintiff STEPHEN HARRIS (“HARRIS”) is an individual domiciled and residing in Victoria, Australia;

14. Plaintiff AGATA KAMIENSKA (“KAMIENSKA”) is an individual domiciled and residing in Attica, Greece;

15. Plaintiff WILLIAM CHUA TIONG KENG (“KENG”) is an individual domiciled and residing in Punggol, Singapore;

16. Plaintiff CHOW HON LAM (“LAM”) is an individual domiciled and residing in Kuala Lumpur, Malaysia;

17. Plaintiff JENNIFER LE FEUVRE (“LE FEUVRE”) is an individual domiciled and residing in the Western Cape, South Africa;

18. Plaintiff JAMIE MARSHALL (“MARSHALL”) is an individual domiciled and residing in Williamsport, Pennsylvania;

19. Plaintiff DAMIEN MASON (“MASON”) is an individual domiciled and residing in Victoria, Australia;

20. Plaintiff MARIO SANCHEZ NEVADO (“NEVADO”) is an individual domiciled and residing in Madrid, Spain;

21. Plaintiff NICKERSTICKERS, INC. is a Washington Corporation doing business in Olympia, Washington;

22. Plaintiff DAVID OLENICK (“OLENICK”) is an individual domiciled and residing in Haddonfield, New Jersey;

1 23. Plaintiff LIZA PHOENIX (“PHOENIX”) is an individual domiciled and
2 residing in Seattle, Washington;

3 24. Plaintiff ALAN PIRIE (“PIRIE”) is an individual domiciled and residing in
4 Trondheim, Norway;

5 25. Plaintiff NATHAN RYDER (“RYDER”) is an individual domiciled and
6 residing in South Yorkshire, United Kingdom;

7 26. Plaintiff JENNIFER SMITH (“SMITH”) is an individual domiciled and
8 residing in Auckland, New Zealand;

9 27. Plaintiff BALAZS SOLTI (“SOLTI”) is an individual domiciled and
10 residing in Budapest, Hungary;

11 28. Plaintiff JYNELL ST. JAMES (“ST. JAMES”) is an individual domiciled
12 and residing in Victoria, Australia;

13 29. Plaintiff KARIN TAYLOR (“TAYLOR”) is an individual domiciled and
14 residing in New South Wales, Australia;

15 30. Plaintiff ZACH TERRELL (“TERRELL”) is an individual domiciled and
16 residing in Bolingbrook, Illinois;

17 31. Plaintiff SIERRA TIEGS (“TIEGS”) is an individual domiciled and
18 residing in Richland Center, Wisconsin;

19 32. Plaintiff MAIKE VIERKANT (“VIERKANT”) is an individual domiciled
20 and residing in Limburg, Netherlands.

21 33. Plaintiffs are informed and believe and thereon allege that Defendant
22 TEESPRING, INC. (“TEESPRING”) is a corporation organized and existing under
23 the laws of the State of Delaware with its principal place of business located at 77
24 Geary Street, 5th Floor, San Francisco, California 94108.

25 34. Plaintiffs are informed and believe and thereon allege that some of
26 Defendants Does 1 through 3, inclusive, are screen printers, manufacturers and/or
27 vendors of garments and consumer goods to Defendant, which Doe Defendants have
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1 printed, manufactured and/or supplied and are manufacturing and/or supplying
2 garments comprised of fabric and other consumer goods incorporating Plaintiffs'
3 copyrighted designs (as hereinafter defined), without Plaintiffs' knowledge or
4 consent or have contributed to said infringement. The true names, whether corporate,
5 individual or otherwise of Defendants Does 1-3, inclusive, are presently unknown to
6 Plaintiffs, which therefore sue said Defendants by such fictitious names and will
7 seek leave to amend this complaint to show their true names and capacities when the
8 same have been ascertained.

9 35. Plaintiffs are informed and believe and thereon allege that at all times
10 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
11 manager, principal, alter-ego, and/or employee of the remaining Defendants and was
12 at all times acting within the scope of such agency, affiliation, alter-ego relationship
13 and/or employment; and actively participated in or subsequently ratified and
14 adopted, or both, each and all of the acts or conduct alleged, with full knowledge of
15 all the facts and circumstances, including, but not limited to, full knowledge of each
16 and every violation of Plaintiffs' rights and the damages to Plaintiffs proximately
17 caused thereby.

18 **CLAIMS RELATED TO THE ARTWORK**

19 36. Prior to the conduct complained of herein, Plaintiffs composed over 1,000
20 original artworks for use in various industries, including the apparel and consumer
21 goods industries. **Exhibits A through BB** consist of exemplars of Plaintiffs'
22 respective artworks (hereinafter "Subject Artworks"). The Subject Artworks are
23 creations of Plaintiffs and are, and at all relevant times were, owned in exclusivity by
24 Plaintiffs.

25 37. Plaintiffs domiciled and/or residing in the United States have applied for
26 and/or have obtained United States copyright registrations covering their respective
27 Subject Artworks.

1 38. Prior to the acts complained of herein, Plaintiffs marketed and sold product
2 incorporating the Subject Artworks in the apparel and consumer goods industries.

3 39. Following this distribution of product bearing the Subject Artworks,
4 Plaintiffs' individual investigations each revealed that TEESPRING had
5 misappropriated the Subject Artworks, and was selling garments and other products,
6 including without limitation mugs, tote bags, stickers, wall art, pillows, and cell
7 phone cases ("Product") bearing illegal reproductions and/or derivations of the
8 Subject Artworks.

9 40. Plaintiffs are informed and believe and thereon allege that, without
10 Plaintiffs' authorization, TEESPRING and others, including certain Doe defendants,
11 created, sold, manufactured, caused to be manufactured, imported and/or distributed
12 Product that bears artwork identical to or substantially similar to the Subject
13 Artworks ("Infringing Product"). Such Infringing Product includes, but is not limited
14 to, the garments and other consumer goods set forth hereunder.

15 41. It is apparent from the side-by-side comparisons of the Subject Artworks
16 and the TEESPRING Infringing Product that the elements, composition, colors,
17 arrangement, and appearance of the designs are substantially and/or strikingly
18 similar. See Exhibits A through BB for comparisons of Plaintiffs' Subject Artworks
19 and the TEESPRING Infringing Product.

20 42. The Subject Artworks included copyright management and attribution
21 information, including without limitation watermarks which identified Plaintiffs as
22 the authors of the Subject Artworks.

23 43. Plaintiffs are informed and believe and thereon allege that following their
24 postings of the Subject Artworks, TEESPRING and others removed Plaintiffs'
25 copyright management and attribution information in order to misappropriate the
26 Subject Artworks.

FIRST CLAIM FOR RELIEF

(For Copyright Infringement – Against All Defendants, and Each)

44. Plaintiffs repeat, reallege, and incorporate herein by reference as though fully set forth, the allegations contained in the preceding paragraphs of this Complaint.

45. The exemplars pictured in the Exhibits A through BB annexed to this Complaint are non-inclusive, and allegations and claims made herein are made as to any and all uses, exploitations, and product that incorporate or bear the Subject Artworks.

46. Plaintiffs are informed and believe and thereon allege that Defendants, and each of them, had access to the Subject Artworks including, without limitation, through access to (a) Plaintiffs' web pages on other "print-to-order" websites, including without limitation RedBubble, Café Press, Design by Humans, Threadless, and Society6; (b) Plaintiffs' individual websites and/or design libraries; (c) Plaintiffs' design libraries located at their websites; and/or (d) garments manufactured and sold to the public bearing artwork lawfully printed with the Subject Artwork by Plaintiffs for their customers. Access is also established by the striking similarity between Plaintiffs' Subject Artwork and the corresponding artwork on Defendants', and each of their, Infringing Product.

47. Plaintiffs are informed and believe and thereon allege that one or more of the Defendants manufactures and screen prints apparel and/or consumer goods. Plaintiffs are further informed and believe and thereon allege that said Defendant(s) has an ongoing business relationship with Defendant retailers, and each of them, and supplied garments and other consumer goods to said retailers, which garments and other goods infringed the Subject Artworks in that said goods featured unauthorized print design(s) that were identical or substantially similar to the Subject Artworks, or were an illegal derivation or modification thereof.

1 48. Plaintiffs are informed and believe and thereon allege that Defendants, and
2 each of them, infringed Plaintiffs' copyrights by creating, making, and/or developing
3 directly infringing and/or derivative works from the Subject Artworks and by
4 producing, distributing and/or selling garments and consumer goods which infringe
5 the Subject Artworks through TEESPRING's on-line website located at
6 www.teespring.com.

7 49. Due to Defendants' acts of infringement, Plaintiffs have suffered
8 substantial damages to their businesses in an amount to be established at trial.

9 50. Due to Defendants' acts of infringement, Plaintiffs have suffered general
10 and special damages in an amount to be established at trial.

11 51. Due to Defendants' acts of copyright infringement as alleged herein,
12 Defendants, and each of them, have obtained direct and indirect profits they would
13 not otherwise have realized but for their infringement of the Subject Artworks. As
14 such, Plaintiffs are entitled to disgorgement of Defendant's profits directly and
15 indirectly attributable to Defendant's infringement of Plaintiffs' rights in the Subject
16 Artworks in an amount to be established at trial.

17 52. Plaintiffs are informed and believe and thereon allege that Defendants, and
18 each of them, have committed acts of copyright infringement, as alleged above,
19 which were willful, intentional and malicious, which further subjects Defendants,
20 and each of them, to liability for statutory damages under Section 504(c)(2) of the
21 Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000.00)
22 per infringement. Within the time permitted by law, Plaintiffs will make their
23 election between actual damages and statutory damages.

SECOND CLAIM FOR RELIEF

(For Vicarious and/or Contributory Copyright Infringement - Against All Defendants)

53. Plaintiffs repeat, reallege, and incorporate herein by reference as though fully set forth, the allegations contained in the preceding paragraphs of this Complaint.

54. Plaintiffs are informed and believe and thereon allege that Defendants knowingly induced, participated in, aided and abetted in and profited from the illegal reproduction and/or subsequent sales of garments and consumer goods featuring the Subject Artworks as alleged herein.

55. Plaintiffs are informed and believe and thereon allege that Defendants, and each of them, are vicariously liable for the infringement alleged herein because they had the right and ability to supervise the infringing conduct and because they had a direct financial interest in the infringing conduct.

56. By reason of the Defendants', and each of their, acts of contributory and vicarious infringement as alleged above, Plaintiffs have suffered and will continue to suffer substantial damages to their businesses in an amount to be established at trial, as well as additional general and special damages in an amount to be established at trial.

57. Due to Defendants', and each of their acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of the Subject Artworks. As such, Plaintiffs are entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement of Plaintiffs' rights in the Subject Artworks, in an amount to be established at trial.

58. Plaintiffs are informed and believe and thereon allege that Defendants, and each of them, have committed acts of copyright infringement, as alleged above,

1 which were willful, intentional and malicious, which further subjects Defendants,
2 and each of them, to liability for statutory damages under Section 504(c)(2) of the
3 Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000.00)
4 per infringement. Within the time permitted by law, Plaintiffs will make their
5 election between actual damages and statutory damages.

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7 **THIRD CLAIM FOR RELIEF**

8 (For Violation of 17 U.S.C. § 1202 – Against all Defendants)

9 59. Plaintiffs included copyright management information (“CMI”), as that
10 term is described in 17 U.S.C. § 1202 of the Copyright Act, on many of the Subject
11 Artworks in the form of watermarks on their respective Subject Artworks. Said CMI
12 identified Plaintiffs as the authors of the Subject Artworks.

13 60. Defendants, and each of them, edited, altered and cropped the Subject
14 Artwork, and removed Plaintiffs’ CMI from the Subject Artworks, when creating,
15 marketing, distributing, and selling the Infringing Products.

16 61. Plaintiffs are informed and believe and thereon allege that Defendants, and
17 each of them, violated 17 U.S.C. §1202 by removing and altering Plaintiffs’ CMI,
18 providing false copyright management information in connection with the Subject
19 Artwork and Infringing Products, and distributing and displaying the Infringing
20 Products with removed, altered, and false copyright management information.

21 62. Plaintiffs are informed and believe and thereon allege that Defendants, and
22 each of them, further violated 17 U.S.C. §1202 intentionally removing and/or
23 altering the copyright management information, in the form of text and characters,
24 on or around the Subject Artworks, and distributing copyright management
25 information with knowledge that the copyright management information had been
26 removed or altered without authority of the copyright owner or the law, and
27 distributing and publicly displaying the material, knowing that copyright
28

1 management information had been removed or altered without authority of the
2 copyright owners or the law, and knowing, or, with respect to civil remedies under
3 section 1203, having reasonable grounds to know, that the conduct would induce,
4 enable, facilitate, or conceal an infringement of any right under this title.

5 63. On information and belief, Plaintiffs allege that Defendants and/or their
6 agents, members, and moderators removed Plaintiffs' name, logo, authorship
7 information and other indicia of ownership from the Subject Artworks before
8 marketing and selling the Infringing Product bearing false CMI.

9 64. The above conduct is in violation of the Digital Millennium Copyright Act
10 and exposes Defendants, and each of them, to additional and enhanced common law
11 and statutory damages, attorneys' fees, and penalties pursuant to 17 USC § 1203 and
12 other applicable law.

13 65. Plaintiffs are informed and believe and thereon allege that Defendants, and
14 each of their, conduct as alleged herein was willful, reckless, and/or with knowledge,
15 and Plaintiffs resultantly seek enhanced damage and penalties.

16 **PRAYER FOR RELIEF**

17 Wherefore, Plaintiffs pray for judgment as follows:

18 **Against All Defendants**

19 **With Respect to Each Claim for Relief**

- 20 a. That Defendants, their agents and employees be enjoined from
21 infringing Plaintiffs' copyrights in any manner, specifically those for the
22 Subject Artworks;
- 23 b. That Plaintiffs be awarded all profits of Defendants plus all losses of
24 Plaintiffs, plus any other monetary advantage gained by the Defendants
25 through their infringement, the exact sum to be proven at the time of
26 trial, and/or, if elected before final judgment, statutory damages as
27 available under the Copyright Act, 17 U.S.C. §§ 505, 1203, *et seq.*;

- 1 c. That Plaintiffs be awarded their costs and attorneys' fees as available
2 under the Copyright Act U.S.C. §§ 505, *et seq.*;
- 3 d. That Plaintiffs be awarded their costs, attorneys' fees, and statutory
4 damages under 17 USC § 1203.
- 5 e. That Defendants, and each of them, account to Plaintiffs for their profits
6 and any damages sustained by Plaintiffs arising from the foregoing acts
7 of infringement;
- 8 f. That Plaintiffs be awarded pre-judgment interest as allowed by law;
- 9 g. That Plaintiffs be awarded the costs of this action; and
- 10 h. That Plaintiffs be awarded such further legal and equitable relief as the
11 Court deems proper.

12 PLAINTIFFS DEMAND A JURY TRIAL ON ALL ISSUES SO TRIABLE
13 PURSUANT TO FED. R. CIV. P. 38 AND THE 7TH AMENDMENT TO THE
14 UNITED STATES CONSTITUTION.

15 Respectfully submitted

16 Dated: September 25, 2018

17 By: /s/ Scott Alan Burroughs
18 Scott Alan Burroughs, Esq.
19 Justin M. Gomes, Esq.
20 DONIGER / BURROUGHS
21 Attorneys for Plaintiffs
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